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May 22, 1989

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Lawrence N. Noble, Esquire  
General Counsel  
Federal Election Commission  
999 E Street N.W.  
Washington, D.C. 20463

Attn: Jonathan Levin

Re: MUR 2314 (National Republican  
Senatorial Committee, et al.)

Dear Mr. Noble:

Pursuant to 11 C.F.R. § 111.18(d) this letter is submitted on behalf of the National Republican Senatorial Committee ("NRSC") and Frederick W. Bassinger, as Treasurer, as a proposal for pre-probable cause conciliation negotiations in MUR 2314. For the reasons set forth below, we urge the Commission to authorize conciliation negotiations with the NRSC on this matter.

## INTRODUCTION

The Commission has forwarded two "reason to believe" notifications to the NRSC in this MUR: first, on August 4, 1987 and, second, on February 3, 1989 (hereinafter respectively referred to as the "August 4, 1987 letter" and the "February 3, 1989 letter". The August 4, 1987 letter

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informed the NRSC of a Commission "reason to believe" finding that the NRSC had exercised direction and control over earmarked contributions to the Jim Santini for Senate Committee (the "Santini Committee") and failed to properly report such contributions.<sup>1/</sup> The February 3, 1989 letter informed the NRSC of a Commission "reason to believe" finding that the NRSC had failed to report contributions to the Santini Committee in the form of solicitation costs.<sup>2/</sup>

It is the NRSC's position that the Commission's final determination in MUR 2282 (which involved the question of "direction and control" of earmarked contributions in this same NRSC fundraising program) and the Statement of Reasons issued by Commissioner Josefiak in that MUR establish a clear precedent why the Commission should take no further action with respect to the "direction and control" reason to believe findings detailed in its August 4, 1987 letter. Accordingly, the NRSC is not proposing to enter into pre-probable cause conciliation negotiations on those issues.

Instead, by this letter, the NRSC is proposing to initiate conciliation negotiations with respect to the reason to believe findings concerning the allocation and reporting

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<sup>1/</sup> See August 4, 1987 letter from FEC Chairman Thomas to the NRSC, at ¶¶ 2 - 3.

<sup>2/</sup> See February 3, 1989 letter from FEC Chairman McDonald to the NRSC at ¶ 2.

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of certain solicitations detailed in the Commission's February 3, 1989 letter.

Those findings concern the allocation by the NRSC to particular Senate candidates of the costs of specific earmarking programs<sup>3/</sup> conducted by the NRSC in 1986. Those findings do not, and should not, concern the allocation of NRSC solicitation costs for its own general fundraising efforts. Indeed, as demonstrated below, Congress clearly did not intend the contribution and expenditure limitations of 2 U.S.C. § 441a(h) to require multi-candidate party committees to allocate such general administrative costs to particular candidates.

Nevertheless, the Commission's February 3, 1989 interrogatories to the NRSC request information not only about the solicitation costs for the five 1986 NRSC "Direct To" earmarking programs, but also the costs of the NRSC's general fundraising solicitations for its day-to-day activities.

In an effort to be responsive to the Commission's inquiries, the NRSC has submitted responses to those

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<sup>3/</sup> Those earmarking efforts are detailed in the September 22, 1987 NRSC responses to FEC interrogatories (Question 1) and are known as: (1) the "Direct-To Program"; (2) the "DT Auto Program"; (3) Miscellaneous Conduiting; (4) the "Trust Program"; and (5) "Majority '86".

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interrogatories under separate cover. However, it is the NRSC's position that only the solicitation costs for the five 1986 NRSC earmarking programs are properly the subject of this MUR. And it is the question of the allocation of those particularized solicitation costs and the reporting thereof on which the NRSC is proposing to enter into conciliation negotiations with the Commission.

### DISCUSSION

#### I. The Act

The legislative history of the 1974 amendments to the Federal Election Campaign Act of 1971 (the "Act") demonstrates unequivocally that senatorial campaign committees, such as the NRSC, are not required to allocate their general fundraising expenses and other overhead costs to particular candidates:

The conferees generally agreed that it would be difficult, if not impossible, to attempt to prorate the normal day-to-day administrative expenses of multi-candidate committees to each individual candidate. . . . Language that would clear up this issue was inadvertently left out of the report.

However, there is general agreement among the conferees that the provisions placing limitations on contributions and expenditures should not require . . . the senatorial campaign committees . . . to credit to a candidate's limitations on expenditures and contributions or to otherwise attribute to any

political candidate or his political committees a portion of their normal day-to-day expenses. (emphasis added)

. . .

These day-to-day expenses should be defined to include such items as . . . fund raising expenses, provided that such expenditures do not contribute directly to any candidate's campaign effort. <sup>4/</sup>

Thus, general fundraising expenditures that do not "contribute directly to any one candidate's campaign effort" are considered "normal day-to-day" administrative expenses of party committees such as the NRSC and should not be allocated to the particular candidates supported by that committee during a specific election cycle.

II. The Solicitation Costs of NRSC General Fundraising Efforts Are Not Relevant to this MUR

The NRSC issues numerous fundraising solicitations to raise funds for NRSC activities. These solicitations are not candidate specific, nor do they contribute directly to any one candidate's campaign effort. Rather, they result in the receipt of funds for the general staff missions of the NRSC. Further, and, more importantly, responses to these

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<sup>4/</sup> 120 Cong. Rec. H 10332 - 10333  
(daily ed., Oct. 10, 1974) (statement of  
Congressman Frenzel).

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solicitations result in the development of lists of potential contributors to Republican senatorial candidates. Thus, these general fundraising efforts contribute directly to the NRSC's ability to carry out its overall mission as a multi-candidate party committee. Consistent with the legislative history of 2 U.S.C. § 441a(h) these solicitations are reported to the FEC as NRSC administrative costs.

MUR 2314 is an investigation into the allocation of the solicitation costs associated with the NRSC 1986 earmarking programs. Those programs resulted in solicitations of contributions directly to particular candidates' campaign efforts. The NRSC general fundraising efforts benefit particular candidates only indirectly. Even the FEC General Counsel's Office admits that in order for the solicitation costs of general NRSC fundraising efforts to be attributed to the Santini Committee it is necessary to establish that those expenditures resulted in a direct benefit to Santini.<sup>5/</sup> Hence, the solicitation costs of general NRSC fundraising efforts are not relevant to MUR 2314.

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<sup>5/</sup> Factual and Legal Analysis in MUR 2314, February 3, 1989, at 10.

III. Allocation of NRSC Solicitation Costs  
for Its "Direct To" Programs

As noted in the NRSC responses to interrogatories in this MUR, contributors who responded to general NRSC fundraising efforts were in some circumstances then solicited to contribute to a particular Senatorial candidate, instead of to the NRSC. With the initiation of that separate and distinct solicitation, the NRSC allocated a pro rata portion of the costs of that solicitation to the candidate involved. Four of the five NRSC "earmarking programs" that are the subject of this MUR utilized this approach in some form:

1. In the "Direct To" Program persons who had already responded to general NRSC fundraising solicitations were re-solicited and asked to instead designate some (or all) of their contributions directly to Senate candidates of their choice.<sup>6/</sup>

2. The "Miscellaneous Conduiting Program" involved either direct NRSC solicitations for earmarked PAC and individual contributions for NRSC forwarding to particular candidates, or the receipt (and subsequent

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<sup>6/</sup> May 15, 1989 NRSC Response to FEC Interrogatories, Question 1, ¶ 1.

forwarding to the appropriate candidate) by the NRSC of unsolicited earmarked contributions.<sup>7/</sup>

3. The "Trust" Program involved NRSC solicitations to individuals who had contributed \$10,000 to the NRSC, requesting earmarked contributions to particular Senate candidates.<sup>8/</sup>

4. The "Majority '86 Program" involved NRSC solicitations (or requests) to individuals and PACs who pledged \$5000 or more to the NRSC that they earmark \$4000 of their contribution to a particular Senate candidate and designate the remainder of the contribution for the NRSC operating account.<sup>9/</sup>

For each of these programs, the recipient Senatorial candidates were billed their proportional share of costs, including the solicitation costs for the program, as determined by two outside accounting firms for the NRSC.<sup>10/</sup>

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<sup>7/</sup> September 22, 1987 NRSC Response to FEC Interrogatories, Question, ¶ 3.

<sup>8/</sup> Id., at Question 1, ¶ 4.

<sup>9/</sup> Id., Question 1 at ¶ 5.

<sup>10/</sup> Affidavit of Maryanne E. Preztunik, NRSC Comptroller and Director of Administration, ¶ 11, submitted as part of the NRSC March 10, 1987 Response to the Complaint filed in MUR 2314.



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These allocations have been documented in the NRSC responses to the various FEC interrogatories.

The fifth program, "DT-Auto", was different from the others. In DT-Auto, as in MUR 2282, the only solicitation that occurred were candidate specific mailings. Thus, the cost of the mailings soliciting funds for the Santini Committee were required to be primarily borne by that Committee. The NRSC, as in MUR 2282, used a "per-contribution received" formula in allocating the costs of these candidate specific mailings. However, had the NRSC used the allocation method adopted by the Commission in the conciliation agreement in MUR 2282, the allocable costs to the Santini Committee arguably would have been higher.

#### CONCLUSION

The NRSC is prepared to enter into negotiations concerning the appropriate allocation of costs for all candidate-specific fundraising solicitations at issue in MUR 2314, including specifically the costs of the DT-Auto solicitation letters on behalf of the Santini Committee. However, the NRSC does not consider questions about the costs of its general, non-candidate specific fundraising costs (those incurred prior to the candidate-specific solicitation for designation or redesignation of a contribution) relevant

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or necessary to the resolution of this MUR. Indeed, as noted by Congressman Frenzel in the House floor debate on the conference report of the 1974 Federal Election Campaign Act amendments:

Any effort to attribute these costs [the normal day-to-day administrative expenses of multi-candidate committees] to the contribution and expenditure limitations of any candidate would be unfair to both the candidate and the committee.<sup>11/</sup>

In view of the foregoing, the NRSC respectfully requests the FEC to authorize pre-probable cause conciliation negotiations in MUR 2314.

Respectfully submitted,



Jan W. Baran  
Trevor Potter  
Sherrie P. Marshall

Counsel for the National  
Republican Senatorial Committee

cc: William Canfield, Esq.

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<sup>11/</sup> 120 Cong. Rec. 10332 (daily ed., Oct. 10, 1974) (statement of Congressman Frenzel).





March 17, 1986

Mr. John Sample  
123 Main Street  
Anywhere, Virginia 12345

Mr. Sample:

On behalf of the Republican leadership of the U.S. Senate, I want to offer you a very special invitation.

We would like you to join us at the White House on April 15th for the Majority '86 Confidential Briefing on our 1986 Senate campaign.

Our Majority '86 meeting immediately follows the Inner Circle's 1986 Spring Briefing. And believe me, it will be worth staying for.

You'll receive the most current political intelligence on each of our Senate races, as well as a comprehensive campaign overview from four of the President's top political advisors.

As you may know, Majority '86 is our Party's newest campaign program, designed specifically and solely to meet the incredible challenge we face in this year's Senate elections.

It is a unique concept in political fundraising. Majority '86 allows you to decide, based on confidential campaign reports from Party leaders, where your dollars will have the greatest impact. Then you make your contributions directly to the Republican Senatorial candidates of your choice.

Our April 15th Confidential Briefing will be our second of the 1986 campaign season. Attendance is strictly limited to Majority '86 members -- each of whom must make a financial commitment of \$5,000 (a \$1,000 initial contribution to our Majority '86 candidate escrow account, followed by four \$1,000 contributions directly to each of four Republican Senate candidates).

However, because you are a valued member of the Republican Senatorial Inner Circle, if you renew your Inner Circle membership today we will credit your 1986 dues of \$1,000 to your Majority '86 commitment, if you join the program now.

In other words, we will waive your initial \$1,000 membership contribution to Majority '86, so your total membership commitment

Mr. John Sample  
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will be \$4,000, or four \$1,000 direct contributions to four Senate candidates of your choice.

To join Majority '86 under this special arrangement, please complete the Membership Acceptance and the Candidate Commitment Card I've enclosed.

Then return both with your \$1,000 renewal contribution to the Inner Circle, along with your first Majority '86 candidate commitment check for \$1,000.

The candidate you support is up to you. However, on your Briefing Registration Reply, I've listed three of our candidates who are in serious need of your help right now if they are to have a chance of winning in November.

Your \$1,000 contribution today to one of these campaigns could turn the race around for our candidate, and put him in the Republican victory column on November 4th.

The invitation booklet I've enclosed explains our Majority '86 program in detail and gives you the complete agenda for our private meeting on the 15th.

I urge you to complete the registration reply I've enclosed and return it with your Inner Circle renewal check for \$1,000, your first Candidate Commitment of \$1,000 to join Majority '86 and your conference fee of \$65.

Mr. Sample, my Republican colleagues and I agree that your loyal support of the Inner Circle warrants this special membership arrangement.

We also agree that your involvement in Majority '86 and our Confidential Briefing is critical to retaining our Republican majority in the Senate this year.

Please don't let this opportunity pass by to join the one campaign effort that could decide the outcome of this historic election battle.

I hope very much to see you on April 15th.

Sincerely,

  
John Heinz  
Chairman

P.S. I urge you to take advantage of this special membership arrangement. We need your support of the Inner Circle AND Majority '86, and we need your input at our April Confidential Briefing. Please return the enclosed documents and your contribution checks today to guarantee your place at our event.



September 10, 1986

Mr. John Sample  
123 Main Street  
Anywhere, Virginia 12345

Dear John,

Enclosed is a very important video/ tape I'd like you to watch as soon as possible.

It's only 26 minutes long and it explains as succinctly as anything can why it is absolutely essential we maintain Republican control of the U.S. Senate. It also explains how you can help insure we accomplish this objective.

So I urge you to take just a moment to watch this tape.

Here, in a nutshell, is what you are going to see:

After a short introductory statement, a narrator off screen will highlight what our Republican Majority has actually done for you during the past six years.

Frankly, I think you may find many of the facts and figures more impressive and substantive than you might expect.

After this short briefing, you'll see a select group of TV commercials from seven of our closest and most hotly contested Senate races.

The tape concludes with a short pitch from me about why a prominent Republican leader such as you should help a new candidate support program called Majority '86.

Majority '86 involves a commitment of \$5,000 -- \$1,000 goes directly to the NRSC to help us raise the \$11.5 million we need to fully fund our legal commitment to each of our 34 Senate candidates.

But because you are a member of the Republican Senatorial Inner Circle, this first \$1,000 of your Majority '86 commitment will be covered by your Inner Circle membership dues.

The balance of your Majority '86 commitment (\$4,000) goes directly to the four Senate candidates you decide to support.

What's particularly important about your Majority '86 commitment is that every penny will be used to pay for air time to show candidate commercials of the type I've included on this video tape.

I've also enclosed a brochure that gives you more detailed information about our Majority '86 program.

After reading this brochure and watching the video tape, if you still have any questions or concerns, please don't hesitate to call our Majority '86 Chairman, Ed Forgotson, at 1-800-722-1188.

If after talking with Ed or one of his assistants, you are still not convinced your participation in Majority '86 is needed, then I'd deeply appreciate it if you would take a few moments to write me a personal note explaining why.

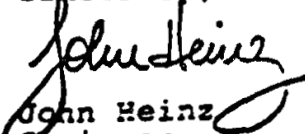
But whatever you decide, I need to hear from you without delay.

You see, every one of the seven Senate candidates you will see on this video tape is caught up in a tough Senate election that will quite literally be decided by just a few votes -- and just a few dollars -- either way.

So I think you can appreciate why I'm anxious to hear from you.

And why I'm anxious for you to join Majority '86 today.

Sincerely,

  
John Heinz  
Chairman

P.S. Please watch the important video tape I've enclosed for you as soon as you can. It explains why we believe a new program called Majority '86 may very well be the key to saving our Senate majority this year.

As one of our party's foremost supporters, I also hope you'll take this opportunity to join Majority '86. Any contributions you have made to Republican Senate candidates in 1985 or 1986 count towards your total Majority '86 commitment. And I will, of course, see to it that your Inner Circle membership dues are also applied to your Majority '86 pledge.

If you have any questions regarding your Majority '86 commitment, please call the Majority '86 hotline at 1-800-722-1188. Thank you.

0880 545 47 66  
44 44 345 0880



# National Republican Senatorial Committee

Invoice Date \_\_\_\_\_

Invoice Number \_\_\_\_\_

Candidate Committee: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\*Charges for Period of \_\_\_\_\_ to \_\_\_\_\_

Amount directed for the period \_\_\_\_\_

\_\_\_\_\_ Contributors at \$3.00 each = \_\_\_\_\_  
Direct To \_\_\_\_\_

\_\_\_\_\_ Contributors at \$33. each = \_\_\_\_\_  
Bush Halling \_\_\_\_\_

## PAST DUE BILLINGS:

- 1) \_\_\_\_\_
- 2) \_\_\_\_\_
- 3) \_\_\_\_\_
- 4) \_\_\_\_\_

TOTAL: \_\_\_\_\_

(Please pay this amount)

Payable upon receipt. Please make checks payable to the National Republican Senatorial Committee. ATTN: Dina Beaumont.